

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 RICHARD MARKS,

4 Plaintiff,

5 v.

6 WILLIAMS, et al.,

7 Defendants.

Case No. 2:19-cv-01359-APG-EJY

**ORDER**

8 This action is a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a state  
9 prisoner. On October 8, 2019, Magistrate Judge Youchah issued an order directing plaintiff  
10 Richard Marks to file a fully complete application to proceed *in forma pauperis* or pay the full  
11 filing fee of \$400.00 by November 22, 2019. ECF No. 7. Marks has not filed that application,  
12 paid the full filing fee, or otherwise responded to Judge Youchah's order.

13 District courts have the inherent power to control their dockets and “[i]n the exercise of  
14 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.  
15 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may  
16 dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to  
17 obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-  
18 54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d  
19 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
20 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for  
21 failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address);  
22 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
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1 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack  
2 of prosecution and failure to comply with local rules).

3 In determining whether to dismiss an action for these reasons, I must consider several  
4 factors: (1) the public's interest in expeditious resolution of litigation; (2) my need to manage my  
5 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
6 cases on their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at  
7 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;  
8 *Ghazali*, 46 F.3d at 53.

9 Here, the first two factors (the public's interest in expeditiously resolving this litigation  
10 and my interest in managing the docket) weigh in favor of dismissal. The third factor (risk of  
11 prejudice to the defendants) also weighs in favor of dismissal because a presumption of injury  
12 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or  
13 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth  
14 factor (public policy favoring disposition of cases on their merits) is greatly outweighed by the  
15 factors in favor of dismissal. Finally, a court's warning to a party that his failure to obey the  
16 court's order will result in dismissal satisfies the "consideration of alternatives" requirement.  
17 *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. Judge  
18 Youchah's order requiring Marks to file an application to proceed *in forma pauperis* or pay the  
19 full filing fee within 30 days expressly stated: "IT IS FURTHER ORDERED that if Plaintiff  
20 does not timely comply with this order, dismissal of this action may result." ECF No. 7 at 2.  
21 Thus, Marks had adequate warning that dismissal would result from his noncompliance with the  
22 order.

1 I therefore order that this action is dismissed without prejudice based on plaintiff Richard  
2 Marks's failure to file an application to proceed *in forma pauperis* or pay the full filing fee in  
3 compliance with Judge Youchah's October 8, 2019 order. This means that this case is dismissed  
4 without any ruling on the merits of Marks's claims and he may pursue his claims only by filing a  
5 complaint in a new case along with the filing fee or a complete application to proceed *in forma*  
6 *pauperis*, including the required financial certificate and account statements.

7 I further order the Clerk of Court to enter judgment accordingly and close this case.

8 Dated: December 2, 2019.

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11 ANDREW P. GORDON  
12 UNITED STATES DISTRICT JUDGE  
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